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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th December 2004

No. 11362–li/1(BH)-122/1992(Pt)-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd September 2004 in Industrial Dispute Case No. 41/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Polar Latex Ltd., Somanathpur and its workman Sk. Basir Mohammed was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 41 OF 1994

Dated the 22nd September 2004

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of	..	First Party–Management
M/s. Polar Latex Ltd., Somanathpur.		
And		
Their Workman	..	Second Party–Workman
Sk. Basir Mohammed.		

Appearances :

For the First Party–Management	..	Shri B. K. Mohanty
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For the Second Party–Workman himself	..	Sk. Basir Mohammed

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 2415(5)-L. E., dated the 28th February 1994 for adjudication and award.

2. The terms of the reference may briefly be stated as follows :—

“ Whether the action of the Management of M/s. Polar Latex Ltd., Somanathpur in terminating the services of Sk. Basir Mohammed a trainee workman with effect from the 10th January 1992 while he was on leave on medical ground is legal and/ or justified ? If not, what relief he is entitled to ?”

3. Stating in a little detail the case of the workman Sk. Basir Mohammed is that he was appointed as trainee workman by the management of M/s. Polar Latex Ltd., Somanathpur (in short the management) with effect from the 10th April 1991. He had worked in various sections with much sincerity, devotion and to the utmost satisfaction of the management. During the period of traineeship, he became ill and availed medical leave. But the management without any rhyme or reason had illegally terminated him from the service with effect from the 10th January 1992 while he was on leave on the medical ground. According to the workman, he was victimised for his trade union activities and when he organised a trade union of workers working under the management, the management took exception to it and out of grudge terminated him from service. While challenging the legality and justifiability of the action of the management in terminating him from service with effect from the 10th January 1992, he has also prayed for his reinstatement in service with full back wages. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, the workman joined his traineeship on the 10th April 1991 vide appointment letter dated the 10th April 1991 which contained some stipulations. He accepted the very terms of appointment by putting his signature. But during the period of traineeship although he had only served for a period of nine months but remained absent for a total period of 107 days out of 218 working days indicating various reasons. It is categorically averred by the management in its written statement that in Clause 1 of the letter of appointment it has been specifically mentioned that the management may terminate the traineeship if the performance and conduct of the trainee workman is unsatisfactory. According to the management, the absence of the workman concerned for 107 days during the period of nine months training could not be considered as satisfactory performance. He had neither worked continuously for one year nor had completed 240 days of continuous work. Although the workman was issued with notice twice to report for duty but the workman had not turned up for joining the duty. That apart the performance of the workman was reported by the officers of the Company to be very poor and unsatisfactory. Therefore the termination of the workman from traineeship, according to the management, was just legal and proper and therefore he is not entitled to any relief. On the above

back grounds the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

(i) “ Whether the action of the first party management in terminating the services of the second party workman with effect from the 10 January 1992 while he was on leave on medical ground is legal and/or justified ?

(ii) If not, what relief he is entitled to ?”

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as, appointment letter, dated the 10th April 1991, explanation, medical certificate, show cause notice dated the 25th December 1991 and his explanation, postal receipt and termination letter dated the 10th January 1992 marked as Exts. 1 to 7 respectively. On the other hand, the management has examined one Ramesh Chandra Samal as M. W. 1 and has also relied upon the xerox copies of the documents such as, appointment letter dated the 10th April 1991, joining report, notice dated the 30th November 1991, notice dated the 25th December 1991, termination letter dated the 10th January 1992 and the attendance register marked as Exts. A to F/9 respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

It is in the evidence of the workman that he was working under the management as a trainee workman with effect from the 10th January 1990. Due to his illness, he availed medical leave and while he was on leave he was illegally terminated from service with effect from the 10th April 1992. Due to his absence the management issued notice calling for explanation with a direction to submit the same before the 31st December 1991 but he received the notice on the 2nd January 1992 and submitted his explanation on the 4th January 1992. Although he had been to the factory on several occasions for work after the 4th January 1992 but he was not allowed to enter inside the factory and finally he was terminated from service. He admits in his evidence that he received the termination letter dated the 10th April 1992 along with Bank Draft on the 12th April 1992. He has categorically stated that as he was the General Secretary of the Union, the management had illegally terminated him from service for which he has now prayed for his reinstatement in service with back wages. During evidence he has proved the appointment letter, his explanation, medical certificate, show cause notice and his explanation, postal receipt and the termination letter dated the 10th January 1992 marked as Exts. 1 to 7 respectively. During cross-examination the management has suggested that during the tenure as trainee for 218 days he remained absent for 107 days without any

prior permission and intimation and that he did not submit any satisfactory explanation for such absence and that his performance and conduct were found not satisfactory for which he was terminated to which he has given negative replies. On the other hand, the perusal of the evidence of M. W. 1 clearly emerges that the workman was appointed as trainee workman with effect from the 10th April, 1991 vide Ext. A and after joining till the date of his termination on the 10th January, 1992 vide Ext. 8 he remained absent unauthorisedly on several occasions. M. W. 1 has categorically stated that out of 218 working days, he remained absent for 108 days. Due to such unauthorised absence, notices vide Exts. C and D were issued to him on the 30th November, 1991 and the 25th December, 1991 respectively. It is also in the evidence of M. W. 1 that as the performance of the workman was found unsatisfactory, the management was constrained to terminate the services of the workman under clause 1 of appointment letter. It has been suggested to him during cross-examination that in order to suppress the Union activities of the workman concerned being the General Secretary of the Union, the management had terminated his services out of grudge and that the workman availed leave on medical ground from the 22nd April, 1991 to the 15th August, 1991 and from 22nd November, 1991 to the 8th January, 1992 and that after receipt of the notice from the management when he proceeded to join the duty, he was not allowed to enter into the factory premises to which he has replied in the negative.

8. The perusal of the appointment letter Ext. 1, clearly reveals that the workman was appointed as trainee workman in the Company for a period of one year starting from the 10th April, 1991 by an order, dated the 10th April, 1991 which contained *inter alia* the following stipulations :

“Clause 1—

During the period of your traineeship, if we are not satisfied with your work or conduct, we shall have the right to terminate your traineeship at any time without any notice. Similarly, you have the right to resign from your traineeship during this period without notice. During the training period, you may be placed in different sections from time to time as per requirement.”

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On perusal of the attendance register marked as Exts. F to F/9, it is seen that from the date of joining, i. e. the 10th April 1991 till the date of termination on the 10th January 1992, the workman concerned remained frequent absent in every month and such frequent absence without any prior permission led the management to arrive at a conclusion that the performance of the workman was not satisfactory. Although he has filed the medical certificate vide Ext. 3 showing his treatment from the 22nd November 1991 under Dr. Sk. Ahmed but prior to that he had remained absent unauthorisedly without any prior permission of the management and such absence prior to the 22nd November 1991 has nowhere been substantiated by the workman during evidence which clearly emerges that he had absented himself from duty on

many occasions in almost every month since the date of joining as trainee workman. The said certificate had been issued to the workman on the 6th December, 1991 wherein the concerned doctor had advised rest for at least four months from the date of the issue of the certificate. But the request for leave made by the workman for a period of four months with effect from the 6th December, 1991 on the ground of illness had been turned down by the management vide Ext. 4. In the said letter vide Ext. 4, the workman was advised to report at the factory latest by the 31st December, 1991. But infact, he reported himself before the management on the 4th January, 1992 by submitting his explanation vide Ext. 5, wherein he had requested the management to allow him one week time to join in the duty but due to poor performance during traineeship, the management did not feel it expedient to allow the workman to continue as a trainee in any longer and therefore terminated the workman from traineeship with immediate effect in accordance with clause 1 of the service condition stipulated in the appointment letter, dated the 10th April 1991 vide Ext. B. The workman has taken a stand that due to illness, he availed medical leave and during such period, he was illegally terminated from traineeship. As it reveals from the certificate Ext. 3, it is seen that he was under the treatment of the concerned doctor with effect from the 22nd November, 1991 but on perusal of the attendance register marked as Exts. F to F/9, it is clearly evident that prior to his treatment, he had absented himself from duty unauthorisedly on several occasions in every month since the date of his joining. In this respect, the workman has neither filed any leave application nor filed any medical certificate to substantiate his case indicating his illness in every month starting from the date of his joining till the 22nd November, 1991. Nowhere it has been served that such frequent absence of the workman since the date of his joining till the issuance of the medical certificate was legal, valid and genuine. In this respect, the workman has miserably failed to substantiate his frequent absence since the date of joining till the date of termination. Admittedly, the medical certificate issued in favour of the workman has been issued by a private doctor and the mere filing of a certificate from a private physician in my opinion can not be regarded as sufficient evidence to come to the conclusion that the workman concerned was, infact, under the treatment of the concerned physician. That apart, the proof of working for 240 days is stated to be on the workman concerned in the event of any denial of such a factum. The requirement of the statute of 240 days can not be disputed and it is for the workman concerned to prove that he has, infact, completed 240 days in the year preceding his termination. But in the present case, the workman concerned has miserably failed to establish that he had, infact, worked for 240 days in the year preceding his termination. The management, on the other hand, relying on a decision of the Hon'ble Apex Court reported in 2002 Lab. I. C. 138 in the matter of M/s. Kalyani Sharp India Ltd. Vrs. Labour Court No. 1, Gwalior and another has urged that the order of employment vide Ext. 4 itself clearly sets out the terms and conditions of the employment wherein the management shall have the right to terminate the traineeship at any time without any notice in the event of unsatisfactory work or conduct found during traineeship and the services could be regularised only on satisfactory completion of the training. According to the management, the poor performance and unsatisfactory work of the workman concerned during traineeship led the management to

terminate his traineeship with effect from the 10th January, 1992 and the action in this respect was legal and justified. After carefully examining the principles already decided in the aforecited decision, I am of the view that the termination before expiry of training period without issuance of prior notice does not amount to retrenchment. In such view of the matter, I find substance and considerable force in the submission already led by the management.

9. On careful scrutiny of the evidence tendered by the parties being coupled with the proved documents and keeping in view the settled position of law, I am of the opinion that the action of the management in terminating the services of the trainee workman concerned with effect from the 10th January, 1992 while he was on leave on medical ground was legal and justified. In that view of the matter the trainee workman is not entitled to any relief as prayed for.

10. Hence it is ordered :

That the action of the management of M/s. Polar Latex Ltd., Somanathpur in terminating the services of Sk. Basir Mohammed, a trainee workman with effect from the 10th January, 1992 while he was on leave on medical ground is legal and justified. Therefore, he is not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
22-9-2004
Presiding Officer
Labour Court
Bhubaneswar.

P. K. SAHOO
22-9-2004
Presiding Officer
Labour Court
Bhubaneswar.

By order of the Governor
D. MISHRA
Under-Secretary to Government